

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,  
Plaintiff-Appellee.

v.

No. 97-4906

WILLIAM EUGENE ALTMAN, JR., a/k/a  
Gene Altman,  
Defendant-Appellant.

Appeal from the United States District Court  
for the District of South Carolina, at Florence.  
C. Weston Houck, Chief District Judge.  
(CR-96-722)

Submitted: January 12, 1999

Decided: February 22, 1999

Before WILLIAMS and MICHAEL, Circuit Judges, and  
HALL, Senior Circuit Judge.

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Dismissed by unpublished per curiam opinion.

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**COUNSEL**

Michael S. Seekings, Charleston, South Carolina, for Appellant. J.  
Rene Josey, United States Attorney, Alfred W. Bethea, Jr., Assistant  
United States Attorney, Florence, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

### PER CURIAM:

William Eugene Altman, Jr., pleaded guilty to one count of using the United States mail in furtherance of a scheme to defraud an insurance company in violation of 18 U.S.C. § 1341 (1994). Altman was subsequently sentenced to 33 months' imprisonment. On appeal, Altman contends that the district court abused its discretion in denying his motion for a downward departure pursuant to U.S. Sentencing Guidelines Manual § 5K2.0 (1997). Finding Altman's claim unreviewable, we dismiss his appeal.

In his motion for downward departure, Altman maintained that attributing to him for sentencing purposes the total loss sustained by the insurance company as a result of the overall conspiracy, an amount in excess of one million dollars, would greatly overstate the seriousness of the offense. See USSG § 2F1.1. The sentencing court determined that a downward departure was not warranted under the circumstances, and therefore, denied the motion.

A district court's decision not to depart downward from the sentencing guidelines is not subject to appellate review unless the refusal to depart is based on the mistaken belief that the court lacked authority to depart. See United States v. Bayerle, 898 F.2d 28, 30-31 (4th Cir. 1990). In the present case, the district court heard Altman's arguments on this issue and determined that a departure was not warranted under the circumstances. There is nothing in the record suggesting that the court believed that it lacked the authority to grant Altman's motion. Thus, we will not review its decision not to depart downward.

Accordingly, we dismiss Altman's appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

### DISMISSED